

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14515 of 2017

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1. Kameshwar Prasad Singh Son of Late Shankar Singh resident of Village - Kohargarh, P.S. Ekma, District - Chapra, presently residing at Road No. 14, Rajiv Nagar, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Bihar, Patna.
3. The Joint Secretary, Urban Development and Housing Department, Bihar, Patna.
4. The Deputy Secretary, Urban Development and Housing Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar Sinha, Sr. Adv.
Mr. Abhinay Raj, Adv.
For the Respondent/s : Mr. Kinkar Kumar - SC9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-01-2018

Heard Mr. Devendra Kumar Sinha, learned Senior counsel appearing for the petitioner along with Mr. Abhinay Raj, Advocate on record and Mr. Kinkar Kumar learned S.C.9 for the State.

The petitioner is aggrieved by the suspension order bearing Memo No.5356 dated 12.08.2016 passed in purported exercise of power vested in the State Government in its Urban Development and Housing Department under Rule 9(1)(c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules').

Mr. Sinha learned Senior Counsel has questioned the suspension order on the following grounds:



- (a) It is not an independent exercise by the State Government as a disciplinary authority to suspend the petitioner; and
- (b) There is no satisfaction recorded by the disciplinary authority for directing the suspension of the petitioner under Rule 9(1)(c) of 'the Rules' which is a condition precedent for such exercise.

It is noting the submissions so advanced that learned State counsel was directed to verify from the records as to whether there is any satisfaction recorded by the disciplinary authority even in the file before such suspension order was passed but Mr. Kinker Kumar on verification of the records fairly does inform that there is no satisfaction recorded by the disciplinary authority to the suspension order.

I have heard learned counsel for the parties and I have perused the records.

The order of suspension is in reference to a letter of the Inspector General of Police, Vigilance Department who vide letter dated 04.08.2016 informed the State Government about the institution of Vigilance Case No. 1 of 2016 against the petitioner and by another letter dated 09.08.2016, while charging the petitioner of non cooperation in the investigation that a recommendation was made for his suspension. In my opinion this was a unsolicited recommendation



made by the Inspector General of Police. The operative portion of the order though refers to Rule 9(1)(c) of 'the Rules' for such exercise but it also relies upon the recommendation made by the Inspector General of Police. For a moment, If I would ignore the recommendation made by the Inspector General of Police as a basis for such decision, yet while exercising power under Rule 9(1)(c) of 'the Rules' the disciplinary authority should have recorded his satisfaction for such suspension which is a mandatory condition precedent for such exercise but is missing in the present case. It is not that on mere institution of criminal case that an order of suspension follows rather the disciplinary authority has to express satisfaction on such requirement before it chooses exercise such power.

The suspension order thus being influenced by the recommendation by the Inspector General of Police as well not satisfying the requirements present in Rule 9(1)(c) of 'the rules', cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed. The petitioner is reinstated on his post.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2018
Transmission Date	NA

